UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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KELLY COLLIN, an individual, on behalf of herself and all others similarly situated,

Plaintiff,

v.

CASCADE LIVING GROUP MANAGEMENT, LLC, a Washington Limited Liability Company; CASCADE LIVING GROUP — GRASS VALLEY, LLC, a Washington Limited Liability Company; and DOES 1 TO 50,

Defendants.

No. 2:24-cv-03236 WBS AC

MEMORANDUM AND ORDER RE: PLAINTIFF'S MOTION TO REMAND

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Plaintiff Kelly Collin brought this putative wage-and-hour class action in Nevada County Superior Court, alleging (1) failure to pay minimum wages under Cal. Labor Code § 1197; (2) failure to pay overtime wages under Labor Code § 510; (3) failure to provide rest periods under Labor Code § 226.7; (4) failure to provide meal periods under Labor Code §§ 226.7, 512; (5) failure

to maintain accurate employment records under Labor Code § 1174; (6) failure to timely pay wages during employment under Labor Code §§ 204, 210; (7) failure to pay wages at separation under Labor Code § 203; (8) failure to reimburse business expenses under Labor Code § 2802; (9) failure to provide accurate itemized wage statements under Labor Code § 226; (10) failure to pay sick pay under Labor Code § 246; and (11) violation of the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200. (Compl. (Docket No. 1-2).) Defendants Cascade Living Group Management, LLC and Cascade Living Group – Grass Valley, LLC removed to this court based on jurisdiction under the Class Action Fairness Act ("CAFA"). Plaintiff moves to remand the action to state court. (Docket No. 5.)

Under the federal removal statute, "any civil action brought in a State court of which the district courts of the United States have original jurisdiction may be removed by the defendant . . . to the district court of the United States for the district . . . where such action is pending." 28 U.S.C. § 1441(a). Under CAFA, the federal courts have original jurisdiction over class actions in which the parties are minimally diverse, the proposed class has at least 100 members, and the aggregated amount in controversy exceeds $5,000,000. 28 U.S.C. § 1332(d)(2). "[N]o antiremoval presumption attends cases invoking CAFA, which Congress enacted to facilitate adjudication of certain class actions in federal court." Dart Cherokee Basin Operating Co., LLC v. Owens, 574 U.S. 81, 89 (2014).

Plaintiff disputes that the $5,000,000 amount in controversy is satisfied. "[I]f a defendant wants to pursue a

federal forum under CAFA, that defendant in a jurisdictional dispute has the burden to put forward evidence showing that the amount in controversy exceeds $5 million." Ibarra v. Manheim Invs., Inc., 775 F.3d 1193, 1197 (9th Cir. 2015); see also Jauregui v. Roadrunner Transportation Servs., Inc., 28 F.4th 989, 992 (9th Cir. 2022) (the "ultimate question" is "whether [defendant] met its burden of showing the amount in controversy exceeded $5 million").

In determining whether the amount in controversy requirement is satisfied, the court determines where the preponderance of the evidence lies based on "proof" submitted by the parties, including "affidavits, declarations, or 'other summary-judgment-type evidence relevant to the amount in controversy at the time of removal.'" See Ibarra, 775 F.3d at 1198 (citing Dart Cherokee, 574 U.S. at 88-89). The amount in controversy includes "damages (compensatory, punitive, or otherwise) and the cost of complying with an injunction, as well as attorneys' fees awarded under fee shifting statutes." Gonzales v. CarMax Auto Superstores, LLC, 840 F.3d 644, 648-49 (9th Cir. 2016).

"[W]hen the claimed amount in controversy is challenged[,] 'CAFA's requirements are to be tested by consideration of real evidence and the reality of what is at stake in the litigation, using reasonable assumptions underlying the defendant's theory of damages exposure.'" Salter v. Quality Carriers, Inc., 974 F.3d 959, 963 (9th Cir. 2020) (quoting Ibarra, 775 F.3d at 1197-98) (emphasis added); see also Ibarra, 775 F.3d at 1199 ("[defendant] bears the burden to show that its

estimated amount in controversy relied on reasonable assumptions").

The only evidence defendants provide is a declaration from Stacy Rayner, the Vice President of Human Resources for Cascade Living Group, LLC. (See Rayner Decl. (Docket No. 1-5) ¶ 1.) Ms. Rayner attests that based on her review of business records, the potential class[1] of all current and former non-exempt employees from October 19, 2020 to the present contains 709 individuals. (Id. ¶ 2.) 375 of those employees had been terminated as of November 12, 2024. (Id.) Defendants compensate non-exempt employees twice monthly. (Id.) During the class period, potential class members worked a total of 15,963 two-week pay periods, with 6,633 of those pay periods occurring from November 12, 2023 to November 12, 2024. (Id.) The current average hourly rate of pay for potential class members is $17.73. (Id.)

In order to conclude that the amount in controversy exceeds $5 million, the court would have to make a number of assumptions. Relying upon the sparse facts provided by the Rayner declaration, defendants ask the court to find the complaint puts at issue $2,162,347.98 for minimum wage violations and associated liquidated damages and penalties; $141,591.81 for overtime wage violations; $566,047.98 for rest period violations; $566,047.98 for meal period violations; $1,596,300.00 for penalties for untimely payment of wages; $1,594,800.00 for

[1] The complaint defines the class as all individuals employed by defendants as non-exempt employees in California beginning four years prior to the filing date of October 18, 2024. (See Compl. ¶¶ 2-3.)

penalties for untimely payment of wages at the end of employment; $239,460.00 for unreimbursed business expenses; and $331,650.00 for failure to provide accurate itemized wage statements. (Notice of Removal (Docket No. 1) at 8-17.) These numbers bring the total to $7,198,245.75, to which defendants add 25% of that value for attorneys' fees (or $1,799,561.44), for a total of $8,997,807.19. (Id. at 19.)

The problem with defendants' figures is that they are either untethered from the allegations of the complaint or entirely unsupported by defendants' evidence. Most glaringly, defendants provide no evidence whatsoever concerning the full-time vs. part-time composition of the workforce or shift lengths, which are crucial to provide a reasonable estimate of the meal and rest break claims and waiting time penalties. See, e.g., Benitez v. Hyatt Corp., 722 F. Supp. 3d 1094, 1102 (S.D. Cal. 2024) ("multiple district courts have refused to credit waiting-time-penalty estimates [under § 203] offered by Defendants who fail to provide shift-length evidence") (collecting cases); Holcomb v. Weiser Sec. Servs., Inc., 424 F. Supp. 3d 840, 846 (C.D. Cal. 2019) (defendants' estimated meal and rest break violation rate was unsupported due to lack of information concerning "the lengths of shifts, employees' part-time or full-time status, or frequency of violations that may have occurred").

The information to support or refute defendants' estimate of the amount in controversy would be in the possession of defendants. Defendants could easily have provided all of that information if it existed, but they chose not to, instead engaging in "mere speculation and conjecture" supported by

"unreasonable assumptions." See Ibarra, 775 F.3d at 1197; see also Garibay v. Archstone Communities LLC, 539 F. App'x 763, 764 (9th Cir. 2013) (defendant's evidence was insufficient to establish CAFA jurisdiction because "[t]he only evidence the defendants proffer to support their calculation of the amount in controversy is a declaration . . . which sets forth only the number of employees during the relevant period, the number of pay periods, and general information about hourly employee wages," bolstered by "speculative and self-serving assumptions about key unknown variables").

This is to say nothing of the plain legal errors underlying defendants' estimated attorneys' fees, which improperly include claims not eligible under the fee shifting statutes, see Fritsch v. Swift Transp. Co. of Ariz., LLC, 899 F.3d 785, 796 (9th Cir. 2018); Kirby v. Immoos Fire Prot., Inc., 53 Cal. 4th 1244, 1248 (2012) (cited with approval in Naranjo v. Spectrum Sec. Servs., Inc., 13 Cal. 5th 93, 110–11 (2022)); and estimate of the penalties associated with untimely payment of wages, which applies the wrong statute of limitations, see Peppers v. Pac. Off. Automation, Inc., No. 23-cv-7181 JGB KKX, 2023 WL 8653142, at *5 (C.D. Cal. Dec. 14, 2023) (citing Cal. Code Civ. Proc. § 340); Murphy v. Kenneth Cole Prods., Inc., 40 Cal. 4th 1094, 1103–04 (2007).

The amount in controversy in this action may or may not exceed $5 million. But defendants have failed to provide this court with sufficient information to make that determination. As the employer, defendants are the only parties in possession of the basic employment data that is fundamental to establishing the

amount in controversy. Rather than providing that data, they have chosen to play games with the court, presenting make-believe figures and leaving the court to wring its hands over whether those figures are "reasonable." In attempting to evaluate defendants' calculations, the court is left with few answers and a lot of frustration.

In effect, defendants' "approach amounts to little more than plucking [assumptions] out of the air and calling [them] 'reasonable' -- a wasteful and silly, but routine, exercise in mathematical fantasyland." See Peters v. TA Operating LLC, No. 22-cv-1831 JGB SHK, 2023 WL 1070350, at *9 (C.D. Cal. Jan. 26, 2023). While defendants need not "provide evidence proving the assumptions correct," the assumptions supporting defendants' calculations must have "some reasonable ground underlying them." Arias v. Residence Inn by Marriott, 936 F.3d 920, 925-27 (9th Cir. 2019) (quoting Ibarra, 775 F.3d at 1199) (internal quotations omitted). Defendants' sweeping assumptions fall short of the Ninth Circuit's guidance for reasonableness. See id.

For the foregoing reasons, defendants have failed to establish by a preponderance of the evidence that the amount in controversy exceeds $5 million, and therefore have failed to show that the court has jurisdiction under CAFA. Of course, should it subsequently become apparent that the amount in controversy in fact exceeds $5 million, defendants will be free again remove to federal court, as CAFA cases "may be removed at any time" subject to the requirements of 28 U.S.C. §§ 1446(b)(1) and (b)(3). See Roth v. CHA Hollywood Med. Ctr., 720 F.3d 1121, 1126 (9th Cir. 2013); Rea v. Michaels Stores Inc., 742 F.3d 1234, 1238 (9th Cir.

2014). But if defendants wanted to avail themselves of federal jurisdiction at this juncture, they should have made a good faith effort to satisfy their burden.

IT IS THEREFORE ORDERED that plaintiff's motion to remand (Docket No. 5) be, and the same thereby is, GRANTED. This action is hereby REMANDED to the Superior Court of the State of California, in and for the County of Nevada.

Dated: February 6, 2025

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE